

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VICKIE L. LINGWOOD,

Plaintiff,

v.

DEPARTMENT OF COMMERCE and GARY  
LOCKE, in his official capacity as  
SECRETARY OF COMMERCE,

Defendants.

NO.

COMPLAINT FOR INJUNCTIVE,  
DECLARATORY AND OTHER  
RELIEF

Plaintiff Vickie L. Lingwood complains:

**I. Preliminary Statement**

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, Privacy Act, 5 U.S.C. § 552a, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701, *et. seq.*, for injunctive, declaratory and other appropriate relief, and seeking the expedited processing and release of federal agency records requested by Ms. Lingwood from defendant Department of Commerce.

COMPLAINT FOR INJUNCTIVE,  
DECLARATORY AND OTHER RELIEF - 1

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## **II. Jurisdiction and Venue**

2. This court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B), 552(a)(6)(E)(iii) and 552a(g)(1).

3. This court also has jurisdiction pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701-706.

4. Venue lies in this District under 5 U.S.C. §§ 552(a)(4)(B) and 552a(g)(5).

## **III. Parties**

5. Ms. Lingwood is an individual who resides in Normandy Park, King County, Washington. She is a citizen of the United States. She is employed by the Alaska Fisheries Science Center ("AFSC") of the National Marines Fisheries Service, which is a division of the defendant Department of Commerce. Ms. Lingwood's place of employment is at the AFSC's headquarters located at Sand Point in Seattle, Washington.

6. Defendant Department of Commerce ("DOC") is a Department of the Executive Branch of the United States Government. DOC is an agency within the meaning of 5 U.S.C. §§ 552(f)(1) and 552a(a)(1). The National Marine Fisheries Center ("NMFS") is a division of DOC.

7. Defendant Gary Locke is Secretary of Commerce and heads the DOC. He is responsible for the DOC's compliance with the laws of the United

1 States and regulations promulgated thereunder, including the laws and regulations  
2 at issue in this case.

3 **IV. Background**

4 8. Ms. Lingwood is an IT Specialist whose position was classified at ZP-  
5 III. On July 18, 2010, she requested that NMFS reclassify her position to ZP-IV on  
6 the basis that she was performing duties and responsibilities at that higher level.

7  
8 9. On July 20, 2010, in response to Ms. Lingwood's reclassification  
9 request, John Oliver, the Deputy Assistant Administrator for Operations of NMFS,  
10 charged William Karp, Deputy Director of the AFSC, with conducting a formal  
11 review of Ms. Lingwood's request and with issuing a report and recommendation.  
12 In so charging Mr. Karp, Mr. Oliver expressly instructed that Mr. Karp use "impartial  
13 staff" in addressing the issues raised by the request.

14  
15 10. In the course of his investigation, Mr. Karp solicited and received input  
16 from four persons whose identities have been withheld from Ms. Lingwood. Two of  
17 these persons are described by Mr. Oliver as "non-AFSC subject matter experts  
18 (Band V Supervisory IT Specialists)," one is described as Ms. Lingwood's  
19 "supervisor of record," and the fourth is purportedly someone from Workforce  
20 Management. These four persons each issued reports opposing Ms. Lingwood's  
21 request and, relying on these reports, Mr. Karp issued a report and  
22 recommendation that was negative to Ms. Lingwood's reclassification request.

23  
24 11. On or about September 20, 2010, Mr. Oliver issued an initial decision  
25 denying Ms. Lingwood's reclassification request. The initial decision purportedly

1 attaches Mr. Karp's report, but with the caveat that it has been "appropriately  
2 redacted to avoid disclosure of personally identifiable information."

3 12. On September 20, 2010, in response to Mr. Oliver's decision, Ms.  
4 Lingwood sent an email to him requesting certain information that she needed for  
5 purposes of appealing his initial decision. Her appeal was due on October 1, 2010.  
6 The information requested by Ms. Lingwood included the names, job titles,  
7 classifications and office locations of the four individuals who had provided  
8 statements in opposition to Ms. Lingwood's job reclassification request, together  
9 with copies of the statements that they provided to Mr. Karp and other information.  
10 Ms. Lingwood further requested that Mr. Oliver respond within seven days, as this  
11 information was vital to her appeal of his decision. However, Mr. Oliver did not  
12 respond within seven days and, on September 28, 2010, Ms. Lingwood sent a  
13 follow up email to Mr. Oliver again requesting that information.  
14  
15

16 13. On October 5, 2010, Mr. Oliver finally responded via email. He denied  
17 Ms. Lingwood's request for the names, job titles, classifications and office locations  
18 of the four individuals who had provided statements on the basis that "the names  
19 and locations of the reviewers were appropriately redacted to avoid disclosure of  
20 personally identifiable information." He did provide documents that were requested,  
21 but names and other contact information of the four individuals were redacted.  
22

23 14. On October 6, 2010, Ms. Lingwood replied to Mr. Oliver's denial of  
24 records by email asking him to provide her with legal authority that supported his  
25 withholding of information. Ms. Lingwood informed Mr. Oliver that none of the FOIA

1 exemptions were applicable in this case and that withholding this information would  
2 deny her due process and unfairly prejudice her ability to appeal his denial of her  
3 reclassification request.

#### 4 **V. Facts**

5 15. On October 12, 2010, Mr. Oliver responded by email to Ms.  
6 Lingwood's October 6, 2010 email by stating, "I have reviewed your request and  
7 determined that it should be treated as a FOIA request." He further stated that he  
8 had entered her request into the NMFS FOIA system and had forwarded her email  
9 to the NMFS FOIA officer.  
10

11 16. After not hearing anything for more than a week, on October 20, 2010,  
12 Ms. Lingwood responded with a follow up email to Mr. Oliver. In this email, she  
13 referred Mr. Oliver to 5 U.S.C. § 552a and *Voelker v. Internal Revenue Service*, 646  
14 F. 2d 332, 334-335 (8<sup>th</sup> Cir. 1981) as clear legal authority supporting her information  
15 request and refuting his previous explanation for withholding the information she  
16 requested. Mr. Oliver provided no response to that email.  
17

18 17. On October 21, 2010, the FOIA Officer for NMFS, Michael Justen,  
19 informed Ms. Lingwood by email that he had received her information request on  
20 October 13, 2010, and he assigned a FOIA number to her request.  
21

22 18. Nearly a month later, on November 16, 2010, after hearing nothing  
23 further from Mr. Justen, Ms. Lingwood sent a follow up email to Mr. Justen inquiring  
24 as to the status of his production of the information and records requested.  
25

1           19.     Later that day, on November 16, 2010, Mr. Justen responded to Ms.  
2     Lingwood's email, stating that "we are in the final stages of the request." However,  
3     Mr. Justen informed Ms. Lingwood that he could not forward any information to her  
4     until she submitted a Certification of Identity form to him.

5           20.     That same day, on November 16, 2010, Ms. Lingwood emailed to Mr.  
6     Justen a completed and signed Certification of Identity form.

7           21.     On November 22, 2010, more than a month after the initial email from  
8     Mr. Justen, Ms. Lingwood telephoned Mr. Justen to check on the status of her  
9     request. During this conversation, Mr. Justen stated that Ms. Lingwood was  
10    "eligible to receive everything" that she had requested and he indicated that a  
11    response to the request would be sent shortly.  
12

13           22.     On November 29, 2010, Ms. Lingwood telephoned Jean Carter  
14     Johnson, the FOIA Officer for the DOC. Ms. Carter requested that Ms. Lingwood  
15     send an email providing her FOIA number, which Ms. Lingwood promptly did. In  
16     response, Ms. Carter sent an email to Mr. Justen asking him to contact Ms.  
17     Lingwood about the status of her request. However, Mr. Justen failed to contact  
18     Ms. Lingwood. Neither Mr. Justen nor anyone else from the NMFS FOIA office ever  
19     provided a substantive response beyond that stated above.  
20

21           23.     On December 9, 2010, the undersigned counsel for Ms. Lingwood  
22     submitted a FOIA appeal on her behalf to the Assistant General Counsel for  
23     Administration for the DOC. Attached as Exhibit 1 is a true and correct copy of that  
24     appeal and its exhibits.  
25

1           24. By letter dated December 17, 2010, attorney-advisor for the DOC,  
2 Sarah Schwartz, confirmed the receipt of Ms. Lingwood's FOIA appeal.

3           25. On January 12, 2011, Ms. Lingwood's counsel sent an email to Ms.  
4 Schwartz requesting a response to her FOIA appeal and the DOC's lack of  
5 substantive response thereto. The email reminded Ms. Schwartz of the DOC's 20-  
6 day deadline to provide a substantive response to Ms. Lingwood's FOIA appeal,  
7 and that the DOC had failed to provide any substantive response during that period.  
8 The email further stated that Ms. Lingwood prefers to reach a cooperative resolution  
9 with the DOC rather than exercise her legal option to file suit to compel compliance  
10 with her FOIA request and appeal. To that end, her counsel offered to assist Ms.  
11 Schwartz's office in facilitating the prompt release of the requested information.  
12

13           26. Later that day, on January 12, 2011, Ms. Schwartz responded with an  
14 email acknowledging the urgency of Ms. Lingwood's request and stating that "we  
15 are currently working on Ms. Lingwood's appeal."  
16

17           27. On February 15, 2011, after hearing nothing further from the DOC,  
18 Ms. Lingwood's counsel sent another email to Ms. Schwartz, asking again for the  
19 information that Ms. Lingwood had requested and stressing the importance of her  
20 need for the information.  
21

22           28. Later that same day, on February 15, 2011, Ms. Schwartz responded  
23 by email, stating, "We're still actively working on Ms. Lingwood's appeal. I'm  
24 currently waiting on some clarification from NOAA about a couple of the documents,  
25 however, I hope to have the issues sorted soon."

1           29.     In response, on February 15, 2011, Ms. Lingwood's counsel  
2 requested some guidance from Ms. Schwartz as to when the Department of  
3 Commerce would finally provide a substantive response.

4           30.     The next day, on February 16, 2011, Ms. Schwartz responded by  
5 email stating that the Agency continues to work on Ms. Lingwood's appeal, but Ms.  
6 Schwartz did not provide any specificity as to when a substantive response would  
7 be provided.  
8

9           31.     On May 5, 2011, after hearing nothing further from the DOC, Ms.  
10 Lingwood's counsel sent Ms. Schwartz yet another email requesting the status of  
11 the DOC's response to the FOIA appeal.

12           32.     That same day, on May 5, 2011, Ms. Schwartz replied to counsel's  
13 email, but provided neither a substantive response nor any indication as to when  
14 Ms. Lingwood could expect one. Ms. Schwartz indicated that she is still "waiting on  
15 some information about the documents from NOAA's FOIA officer" and that she has  
16 "reminded the FOIA officer today of the urgency of this appeal."  
17

18           33.     A true and correct copy of the chain of emails between Ms.  
19 Lingwood's counsel and Ms. Schwartz is attached (as Exhibit 2 to this complaint).  
20

21           34.     As of the date of this Complaint, the DOC has still provided no  
22 substantive response to either Ms. Lingwood's FOIA request or her appeal.

23           35.     Ms. Lingwood has exhausted her administrative remedies. She is  
24 otherwise entitled to file this Complaint seeking judicial remedy on her FOIA request  
25 and appeal.



**VI. Causes of Action**

A. Violation of FOIA: Failure to Make Records Promptly Available.

36. Ms. Lingwood repeats and realleges paragraphs 1-35.

37. Ms. Lingwood's request for information and her appeal on the DOC's inaction reasonably described the records she seeks and were made in accordance with published rules and procedures to be followed.

38. DOC has failed to make promptly available the records sought by Ms. Lingwood, and has thereby violated the FOIA, including 5 U.S.C. § 552 (a)(3)(A), and corresponding DOC regulations.

B. Violation of FOIA: Failure to Timely Respond.

39. Ms. Lingwood reasserts and incorporates by reference herein paragraphs 1-38.

40. DOC has failed to timely respond to Ms. Lingwood's request for information and records, and has thereby violated the FOIA, including 5 U.S.C. § 552(a)(6)(A), and corresponding DOC regulations.

C. Violation of FOIA: Failure to Make Reasonable Efforts.

41. Ms. Lingwood reasserts and incorporates by reference herein paragraphs 1-40.

42. DOC has failed to make a reasonable effort to search for records responsive to Ms. Lingwood's request, and thereby violated the FOIA, including 5 U.S.C. § 552(a)(3)(C), and corresponding DOC regulations.

1 D. Violation of Privacy Act: Failure to Permit Review of Record.

2 43. Ms. Lingwood reasserts and incorporates by reference herein  
3 paragraphs 1-42.

4 44. DOC has failed to permit Ms. Lingwood access to review the records  
5 she seeks, and has thereby violated the Privacy Act, including 5 U.S.C. §  
6 552a(d)(1), and corresponding DOC regulations.

7 E. Violation of APA: Failure to Timely Respond.

8 45. Ms. Lingwood reasserts and incorporates by reference herein  
9 paragraphs 1-44.

10 46. DOC has failed to timely respond to Ms. Lingwood's requests for  
11 expedited processing, constituting agency action unlawfully withheld and  
12 unreasonably delayed, in violation of the APA. DOC's failure to timely respond is  
13 arbitrary, capricious, and an abuse of discretion, not in accordance with law and  
14 without observance of procedure required by law, all in violation of the APA.

15 F. Violation of APA: Failure to Grant Expedited Processing.

16 47. Ms. Lingwood reasserts and incorporates by reference herein  
17 paragraphs 1-46.

18 48. DOC's failure to grant Ms. Lingwood's requests for expedited  
19 processing is arbitrary, capricious, an abuse of discretion, not in accordance with  
20 law and without observance of procedure required by law, all in violation of the APA.  
21 Such failure has directly caused her harm and prejudice in pursuing administrative  
22 action and appeal rights and privileges.  
23  
24  
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1 G. Attorney's Fees and Legal Costs.

2 49. Ms. Lingwood reasserts and incorporates by reference herein  
3 paragraphs 1-48.

4 50. Ms. Lingwood is entitled to an award of her attorney's fees and legal  
5 costs pursuant to 5 U.S.C. §§ 552(a)(4)(E) or 552a(g)(3)(B), or, alternatively,  
6 pursuant to 5 U.S.C. § 504 and/or 28 U.S.C. § 2412, or otherwise as provided by  
7 law.  
8

9 **VII. Prayer for Relief**

10 Ms. Lingwood prays for:

11 1. Judgment against defendants declaring that Ms. Lingwood is entitled  
12 to full and prompt disclosure of all information requested and directing the DOC to  
13 produce to Ms. Lingwood all requested information and records forthwith without  
14 any delay, withholding or redaction;  
15

16 2. Judgment against defendants enjoining them from any further  
17 withholding of information and records requested by Ms. Lingwood and ordering the  
18 production of any and all DOC information and records withheld from Ms. Lingwood  
19 forthwith and without any redaction;  
20

21 3. An award of Ms. Lingwood's attorney's fees and legal costs in  
22 pursuing her administrative appeal to the DOC and in pursuing this action; and

23 4. Such other relief that the Court deems just and equitable.  
24  
25

1 DATED this 28<sup>th</sup> day of June, 2011.

2 /s/ Scott E. Collins  
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